

The Southeast Quarter (S.E. $\frac{1}{4}$) of the Northeast Quarter (N.E. $\frac{1}{4}$) of Section Seven (7), and the West half (W. $\frac{1}{2}$) of the Northwest Quarter (N.W. $\frac{1}{4}$) and the Southeast Quarter (S.E. $\frac{1}{4}$) of the Northwest Quarter (N.W. $\frac{1}{4}$) of Section Eight (8), in Township Nine (9) North, of Range Seventy-Three (73) West; less the Northwest Quarter (N.W. $\frac{1}{4}$) of Northwest Quarter (N.W. $\frac{1}{4}$) of Section Eight (8), Township Nine (9) North, of Range Seventy-Three (73) West, County of Larimer and State of Colorado.

Legal Description

After recording return to:
Lawrence R. Kueter, Esq.
Isaacson, Rosenbaum, Woods & Levy, P.C.
633 17th Street, Suite 2200
Denver, CO 80202
303/292-5656

Kueter

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement") is granted on this 25th day of November, 1994, by G. ERIC JENSEN and JANET CAIN JENSEN ("Grantor") whose address is 23916 West Currant Drive, Golden, Colorado 80401-9214, to ESTES VALLEY LAND TRUST, a Colorado nonprofit corporation, and/or assigns, ("Grantee"), whose address is P.O. Box 663, Estes Park, Colorado 80517 for the purpose of forever conserving the wildlife, plant habitat and open space and scenic qualities of the subject property.

WITNESS THAT:

A. Grantor is the sole owner of the fee simple interest in the subject property (the "Property") legally described in Exhibit A attached hereto and made a part of this Conservation Easement, which consists of approximately 175 acres of land, together with buildings and other improvements, located in Larimer County, State of Colorado.

B. The Property possesses a unique private wetlands with beaver ponds and significant stands of willows, and other important natural, scenic, open space, and wildlife and plant habitat values of great importance to Grantor, the people of Larimer County, Colorado, and the people of the State of Colorado.

C. The characteristics of the Property, its current use, and state of improvement as of the date of this Conservation Easement are described in a Present Condition Report which has been prepared at the request of Grantor with the cooperation of Grantee. The report shall be acknowledged as accurate by Grantor and Grantee. The report will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. However, the report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

D. Grantor intends to convey this Conservation Easement to Grantee for the exclusive purpose of assuring that, under Grantee's perpetual stewardship, the wildlife and plant habitat, the significant wetland areas, and open space and scenic qualities of the Property will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree, however, that the current use of, and improvements to, the Property are consistent with the conservation purposes of this Conservation Easement.

Please Return to:

PIETER HONDIUS
1996 UPLANDS CIRCLE, LPR

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E. Grantee is a "qualified conservation organization," as defined by the Internal Revenue Code, and accepts the responsibility of enforcing the terms of this Conservation Easement and upholding its conservation purposes forever.

NOW, THEREFORE, for the reasons given, and in consideration of their mutual promises and covenants, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a perpetual Conservation Easement in gross, an immediately vested interest in real property defined by Colorado Revised Statutes §§ 38-30.5-101, et seq., and of the nature and character described in this Conservation Easement, exclusively for the purpose of conserving and forever maintaining the wildlife and plant habitat, and open space and scenic qualities of the Property.

1. **Purpose.** The purpose of this Conservation Easement is to preserve and protect in perpetuity the wildlife and plant habitat, the significant wetlands areas, and open space and scenic qualities of the Property. It is also the purpose of this Conservation Easement to permit the continuation of the residential uses and other uses of the Property which are consistent with the foregoing goals.

2. **Prohibited Acts.** Grantor shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants below. Grantor also authorizes Grantee to enforce these covenants in the manner described below. However, unless otherwise specified below, nothing in this Conservation Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Grantor understands that nothing in this Conservation Easement relieves Grantor of any obligation or restriction on the use of the Property imposed by law.

3. **Construction of Buildings and Other Structures.** The construction or reconstruction of any building or other structures, except those existing on the date of this Conservation Easement, is prohibited except in accordance with and as specifically set forth in subparagraphs A through E below. The locations of the existing improvements on the Property are generally shown on the schematic drawing attached hereto as Exhibit B.

A. **Fences.** Grantor shall maintain and repair the existing fences, according to approximate locations as shown on Exhibit B. New fences may not be built except for perimeter fences and for the protection of the cemetery on the Property and except for perimeter fencing any land acquired through a land exchange with the Forest Service.

B. **Existing Structures.** There currently is one single family residential dwelling, and associated accessory improvements located on the Property which may be repaired, reasonably enlarged, and replaced substantially in their current locations, provided that at no time shall the one residential dwelling permitted hereunder exceed 3,000 square feet in size.

C. **Additional Structures.** The only additional structures which may be constructed on the Property are (i) a garage/bunkhouse, not to exceed approximately 36 feet by

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26 feet in size and to be located approximately 100 feet east of the present house which location is approximately shown on Exhibit B, and (ii) a barn, not to exceed approximately 600 square feet in size, with 2 power poles to bring electricity to the barn, which barn shall be constructed 300 feet to 400 feet north of the present house and in the trees on the edge of the meadow, which location is approximately shown on Exhibit B.

D. *Repair and Replacement.* In the event of damage, destruction, or disrepair, the Existing Structures and Additional Structures may be repaired, reasonably enlarged and replaced, subject to the locational constraints set forth in subparagraphs (B) and (C) above.

E. *Cemetery.* There is an existing cemetery on the Property for burial purposes for Grantor, and his predecessors, successors, and assigns located approximately fifty feet west of the existing residential dwelling. The cemetery may be expanded, but shall not exceed a size of more than approximately 37,500 square feet; provided, however, in no event shall the cemetery be used for any commercial purposes.

4. *Conservation Practices.* The Property shall be managed in accordance with good conservation practices. Grantor and Grantee may consult with a qualified professional mutually agreed upon who will provide written suggestions regarding grazing management and good conservation practices. No chemicals shall be used for land management of the Property, except for control of noxious weeds, without the prior approval of both Grantor and Grantee.

5. *Grazing.* Grantor may graze a limited number of livestock in a manner that maintains the existing native vegetation. The total number of animals permitted on the Property shall never be greater than a number which will be consistent with the preservation of the Property and the protection of the wildlife and plant habitat and the significant wetland areas, and no overgrazing shall be permitted. In any event, livestock grazing shall not exceed 6 AUMs for approximately two months each summer. Any livestock kept year-round shall be auxiliary fed.

6. *Water Well and Septic System.* If for any reason the present domestic well (identified as the "house well" on Exhibit B) or septic system fails or is insufficient for the uses permitted by this Conservation Easement, the drilling of a new well for domestic use and/or construction of a new septic system on the Property shall be permitted. Any portion of the Property disturbed by either of these two projects shall be restored to its original condition. No well water shall be used for commercial irrigation purposes.

7. *Timber Harvesting.* Trees may be cut to control insects and disease, to control invasive non-native species, to clear for fire control, fencing, and to prevent personal injury and property damage. Dead trees may also be cut for firewood, to clear for and to construct fencing and other uses on the Property. Commercial timber harvesting on the Property shall be prohibited.

8. *Mining.* The commercial mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited, except that soil, sand, gravel, or rock may be removed from portions of the Property only for use on the Property or in connec-

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tion with the preservation, protection, or enhancement of wetlands located on the Property. The limited removal of soil, sand, gravel, and rock for use on the Property and for enhancement of wetlands on the Property shall be accomplished in a manner which is consistent with the conservation values expressed in this Conservation Easement.

9. ***Paving and Road Construction.*** Except for roads or driveways for access to improvements permitted hereunder, no portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other paving material. No roads for any other purposes shall be constructed. Grantor shall have the right to excavate and back fill as reasonably required for such road construction as permitted by this Paragraph 9 and for such other improvements as are permitted by this Conservation Easement. No other excavation of any dirt for back fill shall occur without the prior written approval of Grantee.

10. ***Trash.*** The dumping or uncontained accumulation of any kind of trash or refuse on the Property is prohibited.

11. ***Water Rights.*** Grantor shall retain, reserve, and preserve the right to use water rights, if any are owned by Grantor, sufficient to maintain the fish, wildlife, and plant habitat and open space and the significant wetlands areas and scenic qualities of the Property and to irrigate the Property for domestic purposes. No man-made dams or diversions shall be constructed on the Property.

12. ***Commercial or Industrial Activity and Subdivision.*** No commercial or industrial uses shall be allowed on the Property, other than grazing of livestock in accordance with Paragraph 5. No subdivision or other division of the Property by Grantor shall be permitted without the consent of Grantee, provided that Grantor shall be permitted to divide the Property without the consent of Grantee to accomplish any property trades with the U.S. Forest Service for the purpose of furthering this Easement.

13. ***Rights Retained by Grantor.*** Subject to interpretation under paragraph 20 below, as owner of the Property, Grantor retains the right to perform any act not specifically prohibited or limited by this Conservation Easement. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property, the right to sell or otherwise transfer the Property to anyone Grantor chooses, the right to honor existing and to grant additional access easements across the Property. In those circumstances where this Conservation Easement specifies that Grantee's approval is required, Grantor shall notify Grantee in writing to seek approval, and shall not proceed to take any action until approval is received which approval shall not be unreasonably withheld.

14. ***Responsibilities of Grantor and Grantee Not Affected.*** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:

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A. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

B. **Upkeep and Maintenance.** Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

C. **Indemnity.** Grantor shall indemnify, defend, and hold Grantee and its members, officers, directors, employees, agents, and contractors (collectively, the "Indemnified Parties") harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless due to the negligence or intentional acts of any of the Indemnified Parties; (ii) the obligations under subparagraphs 14(A) and 14(B) above; or (iii) the presence of hazardous or toxic substances on, under, or about the Property. For the purpose of this paragraph, hazardous or toxic substances shall mean any substance which is regulated under any federal, state, or local law.

✓ 15. **Enforcement.** Grantee shall have the right to prevent and correct or require correction of violations of the terms and purposes of this Conservation Easement. With reasonable advance notice to Grantor, Grantee may enter the Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee shall immediately notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either (a) restore the Property to its condition prior to the violation or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. Grantor shall discontinue any activity which could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute within a reasonable time, Grantee may, at its discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may get an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of suit and attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement, shall be borne by Grantor unless a court with jurisdiction determines that Grantee has acted in bad faith in seeking to enforce this Conservation Easement. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of scenic or environmental values. The failure of Grantee to discover a violation or to take immediate legal action upon discovery of a violation shall not bar Grantee from doing so at a later time, and shall not be deemed a waiver of any rights hereunder or an abandonment of any duties or responsibilities hereunder.

16. **Transfer of Easement.** With the prior written approval of Grantor, which shall not be unreasonably withheld, Grantee shall have the right to transfer the easement created by this Conservation Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under §170(h) of the U.S. Internal Revenue Code, and under Colorado Revised Statutes §§ 38-30.5-101, et seq., and only if the agency or organization expressly agrees to assume the responsibility imposed on Grantee by this Conservation Easement. Grantor hereby consents to the transfer of the Conservation Easement by Grantee to the Larimer Land Trust at such time as the Larimer Land Trust is (i) a "qualified organization" under §170(h) of the U.S. Internal Revenue Code, and under Colorado Revised Statutes §§ 38-30.5-101, et seq., and (ii) agrees to assume the responsibility imposed on Grantee by this Conservation Easement. Upon such assignment to Larimer Land Trust, the within named Grantee, Estes Valley Land Trust, would be relieved of any further obligation hereunder. If Grantee ever ceases to exist or no longer qualifies under federal or state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that is designated by the then owner of the Property and that agrees to assume the responsibility.

17. **Transfer of Property.** Any time the Property itself, or any interest in it, is transferred by Grantor to any third party, Grantor shall notify Grantee in writing, and the document of conveyance shall expressly refer to this Conservation Easement of Conservation Easement. Grantor's failure to comply with this requirement will not invalidate the conveyance.

18. **Termination of Easement.** If a court with jurisdiction determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill any of its conservation purposes, the court, upon application of either Grantor or Grantee, may terminate the easement created by this Conservation Easement. If the easement is terminated or destroyed and the Property is sold for public or private use or taken for public use, Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. Grantee shall use the proceeds consistently with the general conservation purposes of this easement, with respect to this or other properties. Grantor shall disclose to Grantee, within six (6) months after the date of this Conservation Easement, the appraised value of this Property with this Conservation Easement in place and the unrestricted fair market value of the Property, as determined by Grantor for this purpose.

19. **Jurisdiction.** Any mediation, arbitration or litigation concerning this Conservation Easement will take place only in Larimer County, Colorado. If a Court action, it will take place in State District Court in Larimer County, Colorado. Grantor and Grantee consent to personal jurisdiction in Larimer County, Colorado, and in State District Court.

20. **Interpretation.** This Conservation Easement shall be interpreted under the laws of Colorado, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

21. **Perpetual Duration.** The easement created by this Conservation Easement shall be a servitude running with the land in perpetuity. This Conservation Easement shall be

recorded in the real property records of Larimer County, Colorado within fifteen (15) days of execution. Every provision of this Conservation Easement that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

22. **Stewardship.** Grantor agrees that upon transfer of the subject property to a third party, either by sale, gift, or inheritance, a contribution will be made by Grantor for stewardship purposes to Grantee and/or assigns, in the amount of \$2,500. This contribution shall be used for easement management and enforcement for the Conservation Easement or other easements. Grantee agrees to allow such funds to "follow the easement," in the case of the assignment of this Conservation Easement by Grantee.

23. **Notices.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered to or sent by first class mail to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

Grantor: G. Eric Jensen
23916 West Currant Drive
Golden, Colorado 80401-9214

*changed
7/30/08
w/ attorney
Grantor*
**with a
copy to:** Lawrence R. Kueter, Esq.
Isaacson, Rosenbaum, Woods & Levy, P.C.
633 17th Street, Suite 2200
Denver, Colorado 80202

Grantee: Estes Valley Land Trust
P.O. Box 663
Estes Park, Colorado 80517

24. **Grantor's Title Warranty.** Grantor warrants that Grantor has good and sufficient title to the Property, free from all liens and encumbrances, subject to restrictions, easements, and covenants of record, and hereby promises to defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.

25. **Acceptance.** Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement of Conservation Easement.

26. **General Provisions.**

A. **Severability.** If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or

circumstances other than those as to which it is found to be invalid, as the case may be; shall not be affected thereby.

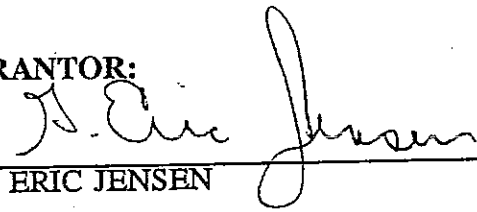
B. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

C. **Counterparts.** The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it; all counterparts, when taken together, shall constitute this instrument.

TO HAVE AND TO HOLD, this Conservation Easement of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:


G. ERIC JENSEN

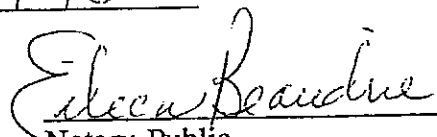

JANET CAIN JENSEN

STATE OF Colorado)
COUNTY OF Jefferson) ss.

The foregoing instrument was acknowledged before me this 25th day of Nov, 1994, by G. Eric Jensen and Janet Cain Jensen.

Witness my hand and official seal.

My commission expires: 6-19-95



Notary Public

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GRANTEE:

ESTES VALLEY LAND TRUST

By James C. Crain
President

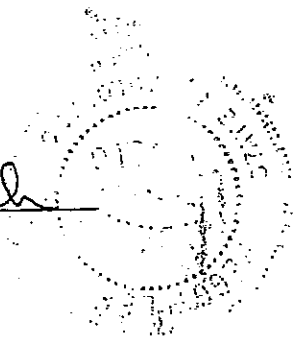
STATE OF COLORADO)
 CITY AND) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 27th day of Nov, 1994, by James C. Crain, on behalf of the ESTES VALLEY LAND TRUST, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: 10/12/96

Daggy Lee Lynch
Notary Public



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EXHIBIT A

Legal Description

The Southeast quarter of the Northeast quarter of Section 7,
Township 9 North of Range 73 West, except that portion contained
within County Road 162,

and

The West half of the Northwest quarter, and the Southeast quarter
of the Northwest quarter, of Section 8, Township 9 North of Range
73 West.

County of Larimer,
State of Colorado

